

London-Tavern, December 6, 1797.

At a GENERAL MEETING of the OWNERS OF SHIPPING, held here this Day,

JOHN LUBBOCK, Esq. M. P. IN THE CHAIR,

THE Committee reported their Proceedings since the last General Meeting, and resigned their Functions.

RESOLVED,

That it appears to this Meeting, from the Report of the Committee, that it is absolutely necessary for the Shipping-Interest of the Country to apply to Parliament for Relief from the Responsibility to which they are deemed liable.

RESOLVED,

That this Meeting is of Opinion, that the Application to Parliament be for the Relief of Ships destined to navigate the High Seas only.

RESOLVED,

That a Committee be appointed for the Purpose of conducting the Application to Parliament, and to pursue such Steps as may be considered best calculated to promote the Success of the important Object in View; and that the same consist of the following Gentlemen, with Power to make Addition to their Number, viz.

THE CHAIRMAN.

ANTHONY BROUGH, Esq.
JOHN BYRON, Esq.
ABEL CHAPMAN, Esq.
ROBERT CURLING, Esq.
THOMAS GILLESPIE, Esq.
JOHN HILL, Esq.
THOMAS KEDDY, Esq.
RALPH KEDDY, Esq.

C. H. MARTENS, Esq.
WILLIAM MARSHALL, Esq.
WILLIAM MASHITER, Esq.
RICHARD MILES, Esq.
D. H. RUCKER, Esq.
ROBERT TAYLOR, Esq.
WILLIAM THOMPSON, Esq.
BENJAMIN WOOD, Esq.

RESOLVED,

That a Subscription be opened, for the Purpose of defraying the Expenses of applying for a Bill in Parliament; and that the Out-Ports be written to, requesting them to contribute thereto, and to appoint a Person, in London, to co-operate with the Committee on their Behalf.

The following Sums were immediately subscribed, viz.

Joseph Dowson	£5 5	Thomas Horncastle	£5 5
Abel Chapman	5 5	George Sharp and Son	5 5
William Thompson	5 5	R. and W. Codner	5 5
Thomas Keddy	5 5	On Behalf of the following Eight Ships, per Mr.	
William Hubbard	5 5	Taylor, viz. Harford, London, Thames, Thetis,	
Ralph Keddy	5 5	Hambro' Packet, Mary-Anne, Argus, Elbe	84 0
C. H. Martens	5 5	On Behalf of the following Three Ships, per Mr.	
Thomas Metcalfe	5 5	Rucker, viz. Golden Grove, Mercury, Caledonia	31 10
Robert Curling and Co.	5 5	On Behalf of Liverpool and Hull Cheefe-Ships, per	
Thomas Old	5 5	Mr. Wood	21 0
John Byron	5 5	Thomas Brown	5 5
D. H. Rucker	5 5	J. J. Maillard	5 5
John Horton	5 5	Mount and Johnson	5 5
R. and P. Cumming	5 5	William Leighton	10 10
Anthony Brough	5 5	The Balance of Ship-Owners' Transport-Accounts,	
Charles McCarthy	5 5	per Mr. William Leighton	17 3
Robert Taylor	5 5	A. Collins	5 5
T. and E. Gillespie	5 5	Kenfington and Wiggen	5 5
William Mashiter	5 5	Thomas Rowcroft	5 5
John Lubbock	5 5	Henry Fletcher	5 5
Richard Miles	5 5	Francis Easterby	5 5

RESOLVED,

That Copies of the preceding Resolutions be fairly transcribed, and left at the Bar of Lloyd's, Batson's, and the Jamaica, Coffee-Houses; at Messrs. Forster, Lubbock, Bofanquet, and Co's.; and at Benjamin Wood's, Esq. the Treasurer, Bishopsgate-Street; for the Signature of such Ship-Owners, Merchants, and others, as wish to support the above Application to Parliament, and at which Places Subscriptions will be received.

JOHN LUBBOCK, CHAIRMAN.

RESOLVED,

That the Thanks of this Meeting be given to the Chairman for his able Conduct in the Chair.

C A S E

Of the SHIP-OWNERS.

In order that the OWNERS of SHIPS may be fully acquainted with the dangerous Situation in which they are placed, the following Case, with the Opinions of *Mr. Law* and *Mr. Holroyd* thereon, is submitted to their Consideration.

Mr. Law was Counsel for the Plaintiff and *Mr. Holroyd* for the Defendant in the Action, *Smith* against *Sheppard*, lately determined in the Court of King's Bench, and their Opinions clearly shew the absolute Necessity of the intended Application to Parliament, for an Act to relieve the Owners of Ships from the Responsibility to which they are now liable.

C A S E.

BY the common Bills of Lading made Use of in all commercial Nations, the Masters of Ships acknowledge that the Goods and Merchandize, which are put on-board their respective Vessels, are "*shipped in good Order and well conditioned*," and they undertake to deliver them in the like good Order and wellconditioned at the Port of Destination, "*the Dangers of the Seas only excepted*," unto the Consignee or his Assigns, he or they paying the stipulated Freight for the same.

In the Action, *Smith* against *Sheppard*, lately determined in the Court of King's Bench, it was held that "Owners of Ships are fully responsible for all Dangers of the Sea that do not arise by the Act of God immediately operating on the Vessel."

BUT, notwithstanding this Determination, several Owners of Ships still insist that they are not liable to make good the Amount of the Damage which may happen to Goods or Merchandize on-board their Vessels, by such Accidents as are described in the following Queries, as they conceive themselves to be protected by the Words, "*the Dangers of the Seas only excepted*," which are always inserted in the Bills of Lading.

You are therefore desired to give your Opinion upon the following Queries:

QUERY 1st. — If a Ship or Vessel, in the Prosecution of her Voyage, either foreign or coastwise, strike upon a sunken Rock not laid down in any Chart, in which Case no Degree of Negligence can possibly be imputed to the Master or Mariners, is not the Owner liable to make good the Damage done to the Cargo?

QUERY 2d. — If a Vessel be run on-shore, or be stranded through any Error in the Reckoning, or through any Mistake or Ignorance of the Master or Mariners, is not the Owner liable to make good the Damage done to the Cargo?

QUERY 3d. — If a Vessel, in entering into or going out of a Bar-Harbour in fine Weather, strike upon the Bar and sink, is not the Owner liable to make good the Damage done to the Cargo?

QUERY 4th. — If a new Vessel, or a Vessel that has been lately repaired, spring a Leak at Sea from a Treenail-Hole having been left open, or if a Vessel spring a Leak in Consequence of a Hole made by Rats, is not the Owner liable to make good the Damage done to the Cargo?

QUERY 5th. — If a Vessel be sunk or damaged by any other Vessel running against her, is not the Owner of the Vessel so sunk or damaged liable to make good the Damage done to the Cargo?

QUERY 6th. — If the Accidents above-mentioned, or others of a similar Nature, happen to Ships in moderate Weather, and not through Tempests or Lightning, and the Cargoes of those Ships are thereby damaged or lost, are not the Ship-Owners liable to make good the whole Amount of the Loss which may happen by such Accidents to Goods or Merchandize on-board their Ships or Vessels? And, in Case the Owner of such Goods or Merchandize should have insured the Amount of them, will that Circumstance in any Degree lessen the Responsibility of the Ship-Owners? May not either the Insurer or the Owner of the Goods and Merchandize bring an Action against the Ship-Owner for the full Amount of the Damage done to such Goods or Merchandize?

MR. LAW'S OPINION.

1st. — I AM clearly of Opinion, that the Owner of a Ship or Vessel, which, in the Course of her Voyage, foreign or coastwise, strikes upon a sunken Rock not laid down in any Chart, is liable to make good the Damage thereby occasioned to the Cargo; and that the Absence of any actual Negligence, on the Part of the Master or Mariners, will not exempt them from being so liable. "Every Thing (as said by Lord-Chief-Justice Lee, in the Case of *Dale v. Hall*, 1 Wilson, 281) is Negligence in Carriers which the Law does not excuse," and the Law only excuses Losses by the Act of God and the King's Enemies. There is no Difference in this Respect between Carriers by Water and Land; that has been settled in many Cases, and particularly in a modern Case of the Proprietors of the Trent and Mersey Navigation v. Wood, in which Case also it was expressly said, by Mr. Justice Buller, that "whatever is not the Act of God or the King's Enemies is Negligence in a Carrier." The Exemption of "*the Dangers of the Seas*" only excludes Losses occasioned by Lightning or Tempests, and other Causes referable to the immediate Agency of Divine Providence, and Losses occasioned by the King's Enemies. For all other Losses, the Ship-Owner stands in effect an Insurer to the Owner of Goods on-board, notwithstanding this Exception. I am also of Opinion, upon the same Principles, that,

2d. — If a Vessel be run on-shore or stranded through any Misreckoning, Mistake, or Ignorance, of the Master or Mariners, the Owner is liable to make good the Damage done to the Cargo.

3d. — If a Vessel, entering or going out of a Bar-Harbour in fine Weather, strikes upon the Bar and sinks, the Owner is liable to make good the Damage done to the Cargo.

4th. — AND that if a new Vessel, or a Vessel that has been lately repaired, springs a Leak at Sea from a Treenail-Hole being left open, or if a Vessel springs a Leak in Consequence of a Hole made by Rats, the Owner is liable to make good the Damage done to the Cargo. In the former of the Cases here put, there seems to be some Degree of *actual* Negligence, as well as Negligence in Point of Law; so that the Ship-Owner might be liable on that Ground, if he were not liable in Point of Law to the Extent already laid down. As to the latter of these Cases, a Damage by Rats was the particular Cause of Loss in the above-mentioned Case of *Dale v. Hall*, and in which the Ship-Owner was held liable.

5th. — If a Vessel is sunk or damaged by any other Vessel running against her, the Owner of the Vessel so sunk or damaged is liable to make good the Damage done to the Cargo; but the Owner of the Vessel so injured has his Remedy over against the Owners of the Vessel which has occasioned the Injury, supposing it to have arisen from any Negligence, or other Misconduct, in the Master or Mariners of the latter Vessel.

6th. — IN Case the Accidents above-mentioned, or others of a similar Nature, happen to Ships in moderate Weather, and not through Tempests or Lightning, and the Cargoes of those Ships are thereby damaged or lost, the Ship-Owners are liable to make good the whole Amount of the Loss happening by such Accidents to the Goods and Merchandise on-board. The immediate Responsibility of the Ship-Owners is not lessened by the Circumstance of the Owners of the Goods having insured the Amount of them; but, as the Owner of the Goods may not recover and *retain* for his own Benefit a double Satisfaction for the same Loss, he will, in case he receives a full Indemnity for his Loss from the Underwriters, be liable to pay over to them what he afterwards recovers from the Ship-Owner: Or, in case he recovers Satisfaction as to Part of his Loss only from the Underwriters, he will be liable to pay over to them so much of the Money he afterwards recovers from the Ship-Owners; as, after bringing into Account the Money before recovered from the Underwriters, exceeds the actual Amount of his Loss. The Insurer may not, in his own Name, bring an Action against the Ship-Owners, to recover the Damage done to the Goods insured by him; but, after paying the Loss to the Owner of the Goods, and giving or tendering to him a proper and sufficient Indemnity against the Expenses of Litigation, the Insurer would be authorized to commence an Action against the Ship-Owners, in the Name of the Owner of the Goods; and the Court in which such Action should be brought would restrain the nominal Plaintiff from releasing the Action they commenced, if he should attempt so to do.

EDWARD LAW.

LINCOLN'S INN, April 15, 1797.

MR. HOLROYD'S OPINION.

1st. — If a Ship or Vessel, in the Prosecution of a Voyage, either foreign or coastwise, strike upon a sunken Rock, not laid down in any Chart, the Ship not being driven thereon by a Storm, or by the sudden or irresistible Force of a Current, the Owner is liable to make good the Damage thereby done to the Cargo. The Dangers of the Seas, as to which the Owner of the Ship is exempted from Responsibility, are those only which arise from the Act of God or the King's Enemies, acting immediately upon the Vessel and irresistibly, and do not include other unforeseen Accidents that arise, notwithstanding every Care of the Master and Mariners.

2d. — If a Vessel be run on Shore, or be stranded through any Error in the Reckoning, or through any Mistake or Ignorance of the Master or Mariners, the Owner is by Law clearly liable to make good the Damage done to the Cargo.

3d. — If a Vessel, in entering into or going out of a Bar-Harbour in fine Weather, strike upon the Bar and sink, the Owner is liable to make good the Damage thereby done to the Cargo. The Owner, in all the above Cases, seems to me to be clearly responsible, upon the Principle of Law laid down in the late Case of *Smith* against *Sheppard*, drawn from several prior Determinations; which Case extends the Responsibility of the Owner to all Cases, except those Dangers of the Seas which arise from the Act of God or the King's Enemies.

4th. — THE Owner of the Vessel is liable to make good the Damage done to the Cargo by a Leak sprung at Sea, either in a new Vessel or in a Vessel lately repaired, from a Treenail-Hole having been left open, or in Consequence of a Hole made with Rats. The latter Case was determined in 1 Wils. 281, in which the Ship-Master was made responsible, and for him the Owner is responsible. The former Case seems to me a stronger Case against the Owner than that.

5th. — THE Owner of a Vessel, sunk or damaged by another Vessel running against her, is liable to make good the Damage thereby done to the Cargo; although the Accident happen wholly through the Default of that Vessel which has run the other down; but, in that Case, the Owner has his Remedy over, either in his own Name, or in the Name of the Proprietor of the Cargo, against the Master or Owner of the Vessel which run his Ship down, to recover the Damage he is so obliged to make good.

6th. — IN the Accidents above-mentioned, and in others of a similar Nature, happening to Ships in moderate Weather, and not through Tempests or Lightning, the Owners of those Ships are liable to make good the whole Amount of the Loss which the Cargoes thereby sustain. If the Cargoes are insured, that Circumstance does not at all lessen the Responsibility of the Ship-Owners; for, though the Insurers cannot, in their own Names, recover, in any Action against the Ship-Owners, the Amount of the Insurances they are obliged to pay, yet the Proprietor of the Cargo may, and ought, to recover against the Ship-Owners, not merely the Amount of what he is uninsured, but of the whole Damage done to his Goods. On such Recovery he becomes Trustee for the Insurers as to the Amount which the Insurers have paid him, and accountable to them for that Amount, when he receives it from the Ship-Owner; and, if the Insurers have paid him the whole Amount of his Loss, they have a Right, on indemnifying him against the Consequences of the Suit, to recover the same by an Action in his Name against the Ship-Owners.

G. S. HOLROYD.

GRAY'S INN, March 23, 1797.

...of a Bar-Harbour in fine Weather, ... the Owner is

...has been lately repaired, ... the Owner is liable to make good the

...is liable to make good the Damage done to the Cargo; but the Owner of the Vessel is injured ...

...in the Accidents above-mentioned, or others of a similar Nature, ... the Ship-Owner is liable to

EDWARD LAW.

London, 1st April 1791.

MR. HOLROYD'S OPINION.

...is a Ship or Vessel in the Harbour of a Port, ... the Ship-Owner is liable to make good the

...is a Vessel on Fire, or is stranded through any Fault in the Rigging, ... the Ship-Owner is liable to make good the

...is a Vessel in entering into or going out of a Bar-Harbour in fine Weather, ... the Ship-Owner is liable to make good the

...The Owner of the Vessel is liable to make good the Damage done to the Cargo by a Leak, ... the Ship-Owner is liable to make good the

...The Owner of a Vessel, ... the Ship-Owner is liable to make good the Damage

...In the Accidents above-mentioned, and in others of a similar Nature, ... the Ship-Owner is liable to make good the

MR. HOLROYD.

Grays Inn, March 23, 1791.

